DECLARATION OF EMERGENCY

Department of Environmental Quality
Office of the Secretary

8-Hour Ambient Ozone Standard and Nonattainment New Source Review
(LAC 33:III.111.504, 607, 711, 2201, and 2202) (AQ253E2)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allows the Department of Environmental Quality to use emergency procedures to establish rules, and under the authority of R.S. 30:2011, the secretary of the department hereby finds that imminent peril to the public welfare exists and declares that an emergency action is necessary to implement rules concerning the revised primary and secondary National Ambient Air Quality Standards (NAAQS) for ozone and transitional provisions for nonattainment new source review under the revised standard.

This is a renewal of Emergency Rule AQ253E1, which was effective on October 13, 2005, and published in the *Louisiana Register* on November 20, 2005. The department is drafting a rule to promulgate these regulation changes. In this renewal of the Emergency Rule, citation corrections have been made in LAC 33:III.504 to reflect rule changes that were promulgated in the December 20, 2005, issue of the *Louisiana Register*.

On April 30, 2004, EPA enacted 8-hour ozone NAAQS classifications, effective June 15, 2004 (69 FR 23858). The revised 8-hour NAAQS is more protective than the existing 1-hour ozone NAAQS. In order to transition from the existing 1-hour standard to the new 8-hour standard, EPA adopted a rule for implementation of the 8-hour ozone NAAQS-Phase 1 (the "Phase 1 Implementation Rule") on April 30, 2004 (69 FR 23951). In the Phase 1 Implementation Rule, EPA revoked the 1-hour standard in full, including the associated designations and classifications, effective on June 15, 2005.

Litigation by a number of stakeholders pending in the United States Court of Appeals for the District of Columbia Circuit challenged various aspects of the Phase 1 Implementation Rule, resulting in EPA's agreement to reconsider several portions of the rule through renewed notice and public comment. EPA only recently made final decisions on reconsideration, thus clearing the way for effectiveness of the Phase 1 Implementation Rule (70 FR 30592, May 26, 2005). As a result, Louisiana is required to adopt the 8-hour revised standard and measures to implement such standard. This Emergency Rule is necessary to address two of the most immediate aspects of implementation: 1) revision of LAC 33:III.711 to replace the 1-hour primary ambient air quality standard with the 8-hour standard; and 2) revision of nonattainment new source review provisions for parishes that were reclassified from severe under the 1-hour standard to marginal under the 8-hour standard (parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge). Because such parishes are still in nonattainment, the department is adopting measures to ensure that these parishes continue to make progress toward attainment while still accommodating growth. Regulatory changes will also delete references to the 1-hour standard and substitute the 8-hour standard, and take other actions to transition to the 8-hour standard. The attainment date for the Baton Rouge area under the 8-hour standard is June 15, 2007. Failure to adopt this rule on an

emergency basis (i.e., without the delays for public notice and comment) would result in imminent peril to the public welfare as the department would not have the authority to enforce the 8-hour standard.

This Emergency Rule is effective on February 10, 2006, and shall remain in effect for a maximum of 120 days or until a final rule is promulgated, whichever occurs first. For more information concerning AQ253E2, you may contact the Regulation Development Section at (225) 219-3550.

This Emergency Rule is available on the Internet at www.deq.louisiana.gov under Rules and Regulations, and is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374.

Adopted this 8th day of February, 2006.

Mike D. McDaniel, Ph.D.
Secretary

Title 33
ENVIRONMENTAL QUALITY
Part III. Air

Chapter 1. General Provisions

§111. Definitions

A. When used in these rules and regulations, the following words and phrases shall have the meanings ascribed to them below.

* * *

Ozone Exceedance—a daily maximum 8-hour ~~hourly~~ average ozone measurement that is greater than the value of the standard.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:348 (June 1988), LR 15:1061 (December 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:777 (August 1991), LR 21:1081 (October 1995), LR 22:1212 (December 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2444 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 32:**.

Chapter 5. Permit Procedures

§504. Nonattainment New Source Review Procedures

A. – A.1. …

2. Except as specified in Subsection H of this Section, ~~T~~the potential to emit of a stationary source shall be compared to the major stationary source threshold values listed in Subsection L.Table 1 of this Section to determine whether the source is major.

3. Except as specified in ~~Paragraph A.5~~ Subsection H of this Section, the emissions increase that would result from a proposed modification, without regard to project decreases, shall be compared to the trigger values listed in Subsection L.Table 1 of this Section to determine whether a calculation of the net emissions increase over the contemporaneous period must be performed.

a. – d. …

4. Except as specified in Subsection H of this Section, ~~T~~the net emissions increase shall be compared to the significant net emissions increase values listed in Subsection L.Table 1 of this Section to determine whether a nonattainment new source review must be performed.

5. – 7. …

8. For applications deemed administratively complete in accordance with LAC 33:III.519.A on or after December 20, 2001 and prior to June 23, 2003, and for which the nonattainment new source review (NNSR) permit was issued in accordance with Subsection D of the Section on or before June 14, 2005, the provisions of this Section governing serious ozone nonattainment areas shall apply to VOC and NO_x increases. For applications deemed administratively complete in accordance with LAC 33:III.519.A on or after June 23, 2003, and for which the nonattainment new source review (NNSR) permit was issued in accordance with Subsection D of the Section on or before June 14, 2005, the provisions of this Section governing severe ozone nonattainment areas shall apply to VOC and NO_x increases.

B. - D.4. …

5. Except as specified in Subsection H of this Section, ~~E~~emission offsets shall provide net air quality benefit, in accordance with offset ratios listed in Subsection L.Table 1 of this Section, in the area where the national ambient air quality standard for that pollutant is violated.

D.6. - F. …

1. All emission reductions claimed as offset credit shall be from decreases of the same pollutant or pollutant class (e.g., VOC) for which the offset is required. Interpollutant trading, for example using a NO_x credit to offset a VOC emission increase, is not allowed. Except as specified in Subsection H of this Section, ~~O~~offsets shall be required at the ratio specified in Subsection L.Table 1 of this Section.

F.2. – G. …

H. ~~Reserved.~~ Notwithstanding the parish's nonattainment status with respect to the 8-hour National Ambient Air Quality Standard (NAAQS) for ozone, the provisions of this Subsection shall apply to sources located in the following parishes: Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge.

1. For an existing stationary source with a potential to emit of 50 tons per year or more of VOC or NO_x, consideration of the net emissions increase will be triggered for any project that would:

a. increase emissions of VOC or NO_x by 25 tons per year or more, without regard to any project decreases;

b. increase emissions of highly reactive VOC (HRVOC) listed below by 10 tons per year or more, without regard to any project decreases:

i. acetaldehyde;
ii. 1,3-butadiene;
iii. butenes (all isomers);
iv. ethylene;
v. propylene;
vi. toluene;
vii. xylene (all isomers);
viii. isoprene.

2. The following sources shall provide offsets for any net emissions increase:

a. a new stationary source with a potential to emit of 50 tons per year or more of VOC or NO_x;

b. an existing stationary source with a potential to emit of 50 tons per year or more of VOC or NO_x with a significant net emissions increase of VOC, including HRVOC, or NO_x of 25 tons per year or more.

3. The minimum offset ratio for an offset required by Paragraph H.2 of this Section shall be 1.2 to 1.

4. This Subsection shall become effective June 15, 2005.

I. – L.Table 1, Footnote PM_{10}. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:176 (February 1993), repromulgated LR 19:486 (April 1993), amended LR 19:1420 (November 1993), LR 21:1332 (December 1995), LR 23:197 (February 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 27:2225 (December 2001), LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 30:2801 (December 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2436 (October 2005), LR 31:3123, 3155 (December 2005), LR 32:**.

Chapter 6. Regulations on Control of Emissions through the Use of Emission Reduction Credits Banking

§607. Determination of Creditable Emission Reductions

A. - C. …

1. If the design value for the nonattainment area is above the ~~1-hour~~ national ambient air quality standard (NAAQS) for ozone, the department shall compare the current total point-source emissions inventory for the modeled parishes to the base case inventory except that beginning with the 2005 emissions inventory, this comparison shall be made to the base line inventory.

2. - 4.a. …

i. if the design value for the nonattainment area is above the ~~1-hour~~ NAAQS for ozone and the current total point-source inventory for the modeled parishes exceeds the base case inventory or base line inventory, as appropriate per Paragraph C.1 of this Section, baseline emissions shall be the lower of actual emissions, adjusted allowable emissions determined in accordance with Paragraph C.3 of this Section, or emissions attributed to the stationary point source(s) in question in the base case or base line inventory, as appropriate; or

ii. if the design value for the nonattainment area is not above the ~~1-hour~~ NAAQS for ozone or the current total point-source inventory for the modeled parishes does not exceed the base case inventory or base line inventory, as appropriate per Paragraph C.1 of this Section, baseline emissions shall be the lower of actual emissions or adjusted allowable emissions determined in accordance with Paragraph C.3 of this Section; and

C.4.b. - D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:877 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1622 (September 1999), LR 28:302 (February 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 32:**.

Chapter 7. Ambient Air Quality

§711. Tables 1, 1a, 2—Air Quality

A. Table 1. Primary Ambient Air Quality Standards

Table 1. Primary Ambient Air Quality Standards		
Air Contaminant	**Maximum Permissible Concentration**	
PM_{10}	50 µg/m^3	(Annual geometric mean)
	150 µg/m^3	(Maximum 24-hour concentration not to be exceeded more than once per year)
Sulfur Dioxide (SO_2)	80 µg/m^3	or 0.03 ppm (Annual arithmetic mean)
	365 µg/m^3	or 0.14 ppm (Maximum 24-hour concentration not to be exceeded more than once per year)
Carbon Monoxide (CO)	10,000 µg/m^3	or 9 ppm (Maximum 8-hour concentration not to be exceeded more than once per year)
	40,000 µg/m^3	or 35 ppm (Maximum 1-hour concentration not to be exceeded more than once per year)
Ozone	0.08 ppm daily maximum 8-hour average ~~235 µg/m^3~~	The standard is met at an ambient air monitoring site when the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm, as determined in accordance with 40 CFR 50, Appendix I. ~~(0.12 ppm) The standard is attained when the expected number of days per calendar year with maximum hourly average concentration above 0.12 ppm [235 micrograms per cubic meter (µg/m^3)] is equal to or less than one as determined by 40 CFR 50 Appendix H.~~
Nitrogen Dioxide (NO_2)	100 µg/m^3	(0.05 ppm) (Annual arithmetic mean)
Lead	1.5 µg/m^3	(Maximum arithmetic mean averaged over a calendar quarter)

1. - 2. …

B. Table 1a. Secondary Ambient Air Quality Standards

Table 1a. Secondary Ambient Air Quality Standards		
Air Contaminant	**Maximum Permissible Concentration**	
PM_{10}	50 µg/m^3	(Annual arithmetic mean)

Table 1a. Secondary Ambient Air Quality Standards		
Air Contaminant	**Maximum Permissible Concentration**	
	150 µg/m^3	(Maximum 24-hour concentration not to be exceeded more than once per year)
Sulfur Dioxide (SO_2)	1,300 µg/m^3	(Maximum 3-hour concentration not to be exceeded more than once per year)
Carbon Monoxide (CO)	10,000 µg/m^3	or 9 ppm (Maximum 8-hour concentration not to be exceeded more than once per year)
	40,000 µg/m^3	or 35 ppm (Maximum 1-hour concentration not to be exceeded more than once per year)
Ozone	0.08 ppm daily maximum 8-hour average ~~235 µg/m^3~~	The standard is met at an ambient air monitoring site when the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm, as determined in accordance with 40 CFR 50, Appendix I. ~~(0.12 ppm) The standard is attained when the expected number of days per calendar year with maximum hourly average concentration above 0.12 ppm [235 micrograms per cubic meter (µg/m^3)] is equal to or less than one as determined by 40 CFR 50 Appendix H.~~
Nitrogen Dioxide (NO_2)	100 µg/m^3	(0.05 ppm) (Annual arithmetic mean)
Lead	1.5 µg/m^3	(Maximum arithmetic mean averaged over a calendar quarter)

B.1. - C.Table 2. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:348 (June 1988), amended by the Office of the Secretary, Legal Affairs Division, LR 32:**.

Chapter 22. Control of Emissions of Nitrogen Oxides (NO_x)

§2201. Affected Facilities in the Baton Rouge Nonattainment Area and the Region of Influence

A .- C.20. …

D. Emission Factors

1. ~~Except as provided in LAC 33:III.2202,~~ T~~t~~he following tables list NO_x emission factors that shall apply to affected point sources located at affected facilities in the Baton Rouge Nonattainment Area or the Region of Influence.

D.1.Table D-1A. - I.5. …

J. Effective Dates

1. ~~Except as provided in LAC 33:III.2202,~~ T~~t~~he owner or operator of an affected facility shall modify and/or install and bring into normal operation NO_x control equipment and/or NO_x monitoring systems in accordance with this Chapter as expeditiously as possible, but by no later than May 1, 2005.

2. ~~Except as provided in LAC 33:III.2202,~~ T~~t~~he owner or operator shall complete all initial compliance testing, specified by Subsection G of this Section, for equipment modified with NO_x reduction controls or a NO_x monitoring system to meet the provisions of this Chapter within 60 days of achieving normal production rate or after the end of the shake down period, but in no event later than 180 days after initial start-up. Required testing to demonstrate the performance of existing, unmodified equipment shall be completed in a timely manner, but by no later than November 1, 2005.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:290 (February 2002), repromulgated LR 28:451 (March 2002), amended LR 28:1578 (July 2002), LR 30:1170 (June 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2441 (October 2005), LR 32:**.

§2202. Contingency Plan

Repealed.

~~A. This Section shall become effective only in the event that the United States Environmental Protection Agency (EPA) determines and notifies the department in accordance with Section 181(b)(2) of the Clean Air Act as amended [42 USC 7511(b)(2)] that the Baton Rouge Nonattainment Area has failed to attain the 1-hour ozone National Ambient Air Quality Standard (NAAQS) by its appropriate attainment deadline (November 15, 2005, for areas classified as "severe") or, following application for extension by the state, any extension of the deadline approved by the EPA in accordance with Section 181(a)(5) of the Clean Air Act as amended [42 USC 7511(a)(5)].~~

~~B. Emission Factors. The emission factors for the sources listed below in Table B-1 shall supersede the factors for the like sources in Table D-1A of LAC 33:III.2201.D.1. All requirements of LAC 33:III.2201 shall remain applicable to such sources, except as superseded by this Section.~~

~~Table B-1. Contingency Plan Emission Factors~~		
~~Category~~	~~Maximum Rated Capacity~~	~~NO_x Emission Factor [a]~~
~~Industrial Boilers~~	~~>/= 80 MMBtu/Hour~~	~~0.08 pound/MMBtu~~

Table B-1. Contingency Plan Emission Factors		
Category	**Maximum Rated Capacity**	**NO_x Emission Factor [a]**
Stationary Gas Turbines (except peaking)	>/= 10 MW	0.092 pound/MMBtu

[a] based on the higher heating value of the fuel.

C. Effective Dates

1. An owner or operator of a source subject to an emission factor provided in Table B-1 of Subsection B of this Section shall comply with such emission factor as expeditiously as possible, but not later than two years after determination and notification by the EPA in accordance with Subsection A of this Section.

2. Required testing to demonstrate the performance of existing, unmodified equipment shall be completed in a timely manner, but by no later than 30 months after determination and notification by the EPA in accordance with Subsection A of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 30:1170 (June 2004), repealed by the Office of the Secretary, Legal Affairs Division, LR 32:**.